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The State of Pro Bono 2001

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SEPT. 11 CAST a pall over 2001, but it led to a high point in lawyers' efforts to give back to the community.

More than 2,500 lawyers in the New York and Washington, D.C., areas have helped affected families and small-business owners through local bar groups. And the Association of Trial Lawyers of America has moved to assist families free of charge when they go file for federal aid.

The pages that follow describe the work of those and other recipients of The National Law Journal's pro bono awards for 2001.

But what about the months before Sept. 11? From all the indicators available, the record is mixed at best.

At the 106 firms that reported their pro bono hours to the NLJ in the past two years, the number dropped from 3.28% to 3.06% of billable hours. That number is high--the American Bar Association suggests 3% as a goal--but the drop appears significant and it's arguable that the firms reporting seem likely to be the ones donating the most. Though it is a small percentage, the difference represents thousands of hours. At a 300-lawyer firm, it would translate into about 1,300 hours a year, more than half a hard-working lawyer's billable time.

Esther Lardent, president of the Pro Bono Institute, administers its Pro Bono Challenge, which confidentially tracks big law firms' pro bono work. The data for 2001 aren't tallied, but she says the numbers appear flat. "We have some firms that are strong and some firms that have struggled," she says.

The key to a commitment to pro bono, Lardent says, is a firm's stance on whether pro bono work counts internally as billable hours. "Firms that are giving billable-hour parity for pro bono work and showing that they mean it are the firms that are strong," she says. There's no count of pro bono contributions of solo practitioners or midsize and small

firms. But by one measure, it seems to have been static.

The Legal Services Corp. (LSC), which works with attorneys representing poor people, hasn't tallied this year's numbers, says Mauricio Vivero vice president of public affairs, but he expects them to be flat. That would follow a sharp decline a year earlier. From 1999 to 2000 the number of pro bono cases handled by LSC-affiliated attorneys dropped by 20,000, led by a drop in Texas of 7,200.

Still, solo practitioners, like Tallahassee, Fla.'s Karen Gievers, continue to distinguish themselves. Award winner Gievers has worked more than 1,000 hours on behalf of foster children in Florida.

Lawyers in death penalty work say they've seen a drop in volunteerism. Capital cases are expensive and demanding, and those involved in placing attorneys on them say large firms in particular have shied away from them.

"It's a real crisis," says Robin Maher, director of the American Bar Association pro bono death penalty representation project. "In Alabama alone, there are 30 people on death row who don't have lawyers."

One lawyer who has fought a capital conviction for years is award winner JoNell Thomas, a Las Vegas solo practitioner. She's worked more than 2,500 hours and counting on behalf of John Mazzan, who was on Nevada's death row for 20 years before his release.

Also noteworthy is Minnesota's Lindquist & Vennum, whose Charles J. Lloyd and Steven M. Pincus represented Albert Ronnie Burrell. Wrongfully convicted of the murder of an elderly couple, Burrell spent 13 years on Louisiana's death row before being released last year.

James H. Schropp, a Washington partner at New York's Fried, Frank, Harris, Shriver & Jacobson, represented Max Soffar, a Texas inmate whose capital murder conviction was reversed after 21 years.

And Edwin S. Matthews Jr. of Coudert Brothers in New York represented Don Paradis, who was released from prison after 14 years on death row in Idaho. Paradis won't be retried.

Unpopular Clients

Taking unpopular clients and controversial cases is another measure of commitment. Award winner Kathleen T. Zellner of Naperville, Ill.'s Zellner & Associates secured the release of three men sentenced to life for the 1986 rape of a Chicago medical student. In 2001, she spent 800 hours of pro bono time and \$50,000 of her own money on an appeal based on DNA evidence.

David Lubitz of D.C.'s Swidler Berlin Shereff Friedman, challenged an Annapolis, Md., ordinance allowing the police to eject people from designated "drug loitering-free zones." Lubitz' demonstrated that the law targeted predominantly minority populations. The court found it unconstitutional.

In Philadelphia, Pepper Hamilton's David Richman spent 18 years in litigation with the city over its prisons. In a class action that concluded in a settlement at the end of 2000, he succeeded in changing the oppressive conditions of confinement in Philadelphia's prisons.

Among the nominations for the NLJ's award were a number of lawyers who performed significant pro bono work that helped nonprofit organizations provide legal services to the needy.

Alan Sullivan of the Salt Lake City office of Phoenix's Snell & Wilmer has spent countless pro bono hours since 1998 helping to increase the proportion of lawyers who donate to Utah public interest law organizations from 5% to 36%.

An important figure in Atlanta is Terry Walsh of Alston & Bird, who has championed the welfare of children in Georgia. Not only has he helped set up organizations to provide services for children, like the Truancy Intervention Project, but he resigned his equity partnership to be able to do so.

Some cases are challenging because they are so unusual. Lawyers at Seattle's Perkins Coie represented two Cold War-era defectors who claim the CIA didn't keep promises of financial support. Steve Hale and Betsy Alaniz's clients overcame a CIA claim of immunity from judicial scrutiny, and the case is in discovery.

Reed Smith's lawyers spent 6,352 hours to recover the archive of Pittsburgh photographer Teenie Harris, who was swindled out of his negatives.

Cindy Kernick, Donna Doblick and Colleen Lynch won a jury verdict that awarded Harris more than \$4.2 million in damages, enough to permit the estate to get a judgment and execute on the negatives.

An area in which pro bono work has surged is among another traditionally unpopular and vastly under-represented group: immigrants.

"There's a greater level of interest in immigration, asylum and international human rights work," Lardent says.

Latham & Watkins was an award winner chiefly because of its remarkable involvement in immigration cases on behalf of unaccompanied minors.

Among runners-up is Boston solo Eleanor Newhoff. Nancy Kelly of Greater Boston Legal Services estimates that Newhoff spent between 500 and 750 hours on pro bono in

2001 on 40 cases she took through Kelly's office. And she did other pro bono work as well.

Problems for Muslims

Sept. 11 may reflect a failing of the legal profession during a crisis for one group, Muslim and Middle Eastern men.

Sohail Mohammed, a Clifton, N.J., solo practitioner, has been scrambling to get information on the number of them locked up in New Jersey after the attacks. He estimates it may be upward of 600, mostly without lawyers.

Mohammed credits the American Civil Liberties Union (ACLU) with helping to find lawyers to take cases but says he's frustrated that other groups, including the American Immigration Lawyers Association (AILA) haven't acted faster to organize pro bono representation.

Jeanne A. Butterfield, executive director of AILA, says it hasn't tried to organize pro bono lawyers for those detained because of the charges they face.

"The most pressing need for pro bono are for asylum applicants," she says. "A student visa overstayer is not going to be a high priority for pro bono assistance."

While AILA has joined the ACLU and other organizations in a Freedom of Information Act request to find out who is being detained where and why, Mohammed notes that the reasons for the immigrants' detention were not immediately clear and sometimes had dire consequences.

"For the first three or four weeks when we were at the height of these disturbing trends, people were picked up and missing from their families and one person died in detention," he says. "I would expect the legal community to be in the forefront of trying to bring this issue to light."